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The Hon. Sandra J. Feuerstein, U.S.D.J.
United States District Court, Eastern
District of New York
Central Islip Courthouse
100 Federal Plaza, Crtm 1010
Central Islip, NY 11722

**RE: Matkal LLC d/b/a Blue Point v. VG Rush Corp.,
Case No. 2:18-02833-SJF-AKT**

Dear Judge Feuerstein:

I am writing to respond preliminarily to the letter your Honor received late yesterday from counsel for the defendant VG Rush Inc. ("VG Rush").

At some point in June 2019 I mentioned to counsel for VG Rush during settlement discussions that if we did not settle the case I would be amending the complaint because I had realized that the plaintiff Matkal LLC works with its affiliate Blue Point Solutions LLC to sell product online including through the Amazon Marketplace. I would be requesting permission to add Blue Point as a party plaintiff with no change to the nature of the claims against VG Rush.¹ Before witnesses from either VG Rush or Matkal/Blue Point were deposed, I sent counsel for VG Rush a copy of the proposed factual changes to the complaint identifying Blue Point and its relationship to Matkal. Counsel for VG Rush deposed yesterday one of the owners of both businesses and had ample opportunity to ask questions about the very simple corporate structure of the two LLCs. Each is owned by the same people, is headquartered at the same place, and is a Delaware entity.

While I was confused at the beginning of the case and thought Matkal used "Blue Point" as a DBA, it turns out VG Rush was or at least should have been aware they were separate companies long before the case was filed. Indeed, VG Rush shipped the Magformers products at issue in August 2017 to "Blue Point Solutions LLC" at an Amazon warehouse. (I have attached as Exhibit A the first few pages of shipping labels for the 14 boxes of product that VG Rush shipped to Blue Point Solutions LLC in August 2017.) At the same time, as discovery has shown, VG Rush was

¹ No scheduling order addressing amendment of pleadings was entered in the case.

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arranging for invoices for other product it sold to Matkal/Blue Point to be invoiced in the businesses' "marketplace name", "BluePoint Solutions LLC", rather than "Matkal." (I have attached as Exhibit B a few pages from the document production of VG Rush in this case showing this email discussion.)²

Under Your Honor's practices and procedures, we will not be filing the motion papers until after the briefing is completed. We will address the specific arguments VG Rush makes in its opposition after we receive it. However, I did want to make clear to the Court that VG Rush was not deprived of the opportunity to understand the "corporate structure" of Matkal and Blue Point.

Respectfully,



Dustin F. Hecker

DFH/eap

cc: Marc Pernick, Esq. (via ECF)
Sherman Kahn, Esq. (via ECF)
Ted Moses, Esq. (via ECF)
Howard Kleinhendler, Esq. (via ECF)
David Yearwood, Esq. (via ECF)

² The principals of VG Rush similarly own at least one separate entity that sells online. Indeed, that entity appears to have had its own issues with Amazon concerning Magformers products for a time in Fall 2016. (See Exh. C hereto.)